BORA LASKIN LAW LIBRARY
3 1761 04866 6481

EVIDENCE

VOLUME 1

Alan Mewett
Hamish Stewart

Faculty of Law
University of Toronto

1999-2000

These materials are distributed solely for classroom use by students in the Faculty of Law, University of Toronto

BORA LASKIN LAW LIBRARY
AUG 23 1999
FACULTY OF LAW
UNIVERSITY OF TORONTO

EVIDENCE

VOLUME 1

Alan Mewett
Hamish Stewart

Faculty of Law
University of Toronto

1999-2000

These materials are distributed solely for classroom use by students in the Faculty of Law, University of Toronto

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/evidence01mewe

Table of Contents

1. INTRODUCTION 1

1(a) A Note on the Materials 1

1(b) Relevancy, Probative Value, and Prejudice 2

Cloutier v. The Queen 2
Morris v. The Queen 6
R. v. Seaboyer; R. v. Gayme 13

2. WITNESSES: COMPETENCE AND COMPELLABILITY 53

2(a) Spousal Incompetency 53

R. v. Salituro 53
R. v. Hawkins 60
R. v. Duvivier 67

2(b) Does Competence Imply Compellability? 73

Gosselin v. The King 73
R. v. McGinty 75

2(c) Accused's Failure to Testify 88

McConnell and Beer v. The Queen 88
R. v. Noble 92

2(d) The Oath and its Substitutes 109

R. v. Bannerman 109
R. v. Walsh 112

2(e) The Unsworn Evidence of Children 119

R. v. Khan 119
R. v. Marquard 123

2(f) Refreshing and Recording Memory 134

3. HEARSAY 135

3(a) Introduction 135

Subramaniam v. Public Procescutor 135
R. v. Wildman 137
Myers v. Director of Public Prosecutions 144
Ares v. Venner 151
Wright v. Tatham 155
R. v. Wysochan 160
Ratten v. The Queen 161
Note: R. v. Blastland 167

R. v. McKinnon 167
Problems: Hearsay or Non-hearsay? 169
The Rationale for the Exclusion of Hearsay 172

3(b) Some Traditional Exceptions to the Rule Against Hearsay 174

3(b)(i) Res Gestae 174
R. v. Bedingfield 174
R. v. Clark 176
R. v. Risby 181
R. v. Keeler 182
3(b)(ii) Statements Against Interest 186
R. v. O'Brien 187
R. v. Pelletier 190
Lucier v. The Queen 193
Note on Declarations against Interest 194
3(b)(iii) Prior Judicial Proceedings 196
R. v. Potvin 196
3(b)(iv) Bodily and Mental Condition 210
3(b)(v) Statements of Intention 210
Mutual Life Insurance Company v. Hillmon 210
R. v. Wainwright 212
R. v. Thomson 213
R. v. P. (R.) 214
3(b)(vi) Statements by Parties 224
Note: Defining Party Admissions 224
Yorkton Agricultural & Industrial Exhibition Association Ltd. v. Morley et al. . 225
3(b)(vii) Business records 227

3(c) The Principled Approach to Hearsay 228

R. v. Khan 228
R. v. Smith 233
Questions on the Prinicipled Approach 242
R. v. B.(K.G.) 244
Problems: Applying B.(K.G.) 269
R. v. Hawkins 270

4. OPINION EVIDENCE **304**

4(a) Fact or Opinion? 304

R. v. Graat 304
Problem 309

4(b) Expert Opinion: Basic Principles 310

R. v. Mohan 310
Daubert v. Merrell Dow Pharmaceuticals, Inc., ... 313
Beland v. The Queen 321

R. v. Lavallee 339

4(c) Expert Opinion and Hearsay 357

Wilband v. The Queen 357
R. v. Abbey 358
R. v. Lavallee 366